



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Hjalmar Olson, Sr.

35 IBIA 190 (09/20/2000)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF HJALMAR OLSON, SR. : Order Docketing and Dismissing Petition  
: and Referring Matter to the Deputy  
: Director, Office of Hearings and  
: Appeals  
:  
: Docket No. IBIA 00-111  
:  
: September 20, 2000

On September 18, 2000, the Board of Indian Appeals (Board) received a document entitled "Petition for Order Requiring ALJ to Obtain and Probate the Decedent's Will." The petition was filed by Mary B. Olson, through counsel, James Vollintine, Esq., Anchorage, Alaska. Petitioner Olson contends that decedent Hjalmar Olson, Sr., executed a will which conveyed trust property in the State of Alaska, and that, pursuant to Alaska Probate Rule 5, the original copy of the will (will) was deposited with the Alaska State court system in Anchorage, Alaska.

Petitioner states that decedent died on September 22, 1998; that a probate proceeding is pending before Administrative Law Judge Harvey C. Sweitzer; that the Judge has been notified that he does not have the will; that the Judge initially failed to respond to her request that he obtain the will; that persons in the Judge's office later stated that they would obtain the will; and that as of September 13, 2000, the Judge had not yet obtained the will. Petitioner admits that she could file a petition in state court and request that the custodian of the will send it to the Judge. She argues, however, that she should not be put to this expense when the Judge can request the will and when the Judge's office misled her into believing that the Judge would do so.

Petitioner asks the Board to exercise its authority under 43 C.F.R. § 4.318 and order the Judge to obtain the will. In essence, Petitioner seeks a writ of mandamus. Although section 4.318 allows the Board to exercise the inherent authority of the Secretary of the Interior to correct a manifest injustice or error in an appeal before it, the Board is not a court of general jurisdiction. Nothing in the probate or appeal regulations in 43 C.F.R. Part 4 authorizes it to issue orders in the nature of mandamus. Cf. Hannahville Indian Community v. Minneapolis Area Education Officer, 34 IBIA 252 (2000) (Nothing in 25 C.F.R. Part 900 authorizes the Board to consider interlocutory appeals or petitions for mandamus).

Furthermore, although the Board has authority to review certain decisions issued by the Administrative Law Judges in the Hearings Division of the Office of Hearings and Appeals of the Department of the Interior, it does not have general supervisory authority over those Judges.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed but dismisses this petition because it lacks authority to grant the relief requested. However, it refers the petition to the Deputy Director of the Office of Hearings and Appeals, who has administrative responsibility over the Hearings Division.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge